



# Sanction law against Russian and Belarusian audiovisual media

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# Sanction law against Russian and Belarusian audiovisual media

Andrei Richter, Comenius University in Bratislava





# Foreword

The year 2022 has brought back to Europe's soil a ghost that we thought lost in the mists of time: war. A war that, in the words of Council of Europe Secretary General Marija Pejčinović Burić, is "in flagrant violation of the Statute of Council of Europe and the European Convention on Human Rights." A war that represents "a dark hour for Europe and everything it stands for."

During this year, we have been following the many legal developments fuelled by Russia's unprovoked act of aggression. Beyond our newsletter's monthly reporting, the Observatory published a note that discusses the legal and institutional framework behind the EU sanctions against the Russian state-owned channels RT and Sputnik. We are now releasing this IRIS Extra report that provides information on legislative measures and case law in Ukraine and elsewhere in Eastern Europe (Estonia, Latvia, Lithuania and Moldova) against audiovisual media from Russia and Belarus.

The author, Andrei Richter, Professor Researcher of the School of Philosophy at the Comenius University, Bratislava, reports on sanctions on broadcasters as a specific instrument to cease propaganda and disinformation from Moscow and/or Minsk. Furthermore, the report allows the reader to compare the related case law of the European Court of Justice with the earlier decisions on the use of sanctions of the national courts in Eastern Europe.

From my very personal side, I can only express my solidarity with the victims of this gruesome war, wishing that it ends soon and that a durable, just peace ensues.

Strasbourg, November 2022

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

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# 1. Introduction

Traditionally, the basic objective of national or international economic sanctions has been “applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law”.<sup>1</sup> The imposing of sanctions is supposed to substantially affect the interests of state(s) under them. The nature of the recent sanctions or “restrictive measures”, as they are formally called in the European Union (EU), directed at audiovisual media companies seems to be far from economic or political pressure on the governing elite. Rather, they aim to protect the population of the state(s) responsible for the imposition, maintenance or implementation of the sanctions from “manipulation and distortion of facts in order to enhance [the Russian Federation’s] strategy of destabilisation of its neighbouring countries and of the Union and its Member States”.<sup>2</sup> They are considered among “possible new tools” and “preventive measures”, which are at the same time “possible responses” to hybrid threats, “foreign interference and influence operations”.<sup>3</sup> Such sanctions were not invented by the Council of the European Union in 2022, but – in the context of the Russian aggression in Ukraine – had previously been tested by Ukraine and other countries of Eastern Europe.

Reportedly, there are almost 30 million Russian-speaking EU citizens.<sup>4</sup> Many more Russian speakers live in other countries neighbouring Russia, such as in Eastern Europe, the South Caucasus and Central Asia. For several decades they have followed Moscow broadcasts, especially since national media in their own countries would often ignore their linguistic and cultural interests. They are considered by the Russian authorities not just as a loyal audience but also as “compatriots” whose interests Russia is entitled to protect.

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<sup>1</sup> United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, General Comment No. 8 (1997), The relationship between economic sanctions and respect for economic, social and cultural rights.

<sup>2</sup> Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, paragraph 6: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R0350&qid=1663101480916&from=EN>.

<sup>3</sup> Ibid. paragraph 5.

<sup>4</sup> 55th EPRA Meeting (Antwerp), Plenary Session, address by Olha Herasymiuk (Chair of Ukraine’s National Council on Television and Radio Broadcasting), 12 May 2022: <https://www.epra.org/attachments/55th-epra-meeting-antwerp-plenary-session-epra-agma-address-by-olha-herasymiuk-nctrb-chair>.



The Federal Statute “On state policy of the Russian Federation in respect of compatriots abroad”<sup>5</sup> prescribes that the Russian state “shall create the conditions necessary for the transmission to compatriots of information from the Russian Federation by means of television and radio broadcasting, the distribution of periodical and other print publications and of cinema, audio and video content in their native languages”; it also provides financial and logistical support for Russian media outlets targeting the audience abroad, and backing for media outlets owned by Russians abroad.

During past years a number of post-Soviet states have expressed concerns that were often followed with national legal regulation to limit access to these broadcasts. Their reasons were not dissimilar: the harm inflicted by the powerful Russian media on the national audiovisual markets, unregulated intervention in national election campaigns, the imposition of alien political agendas and, at least from about 2014, the manipulation of the minds of their audiences by means of propaganda and disinformation in the interests of the Kremlin. Their complaints were often linked to the threats posed by such broadcasts to their national security or, more precisely, to their information security and cultural security.<sup>6</sup>

Rebroadcasting from Russia has often been restricted by introducing and increasing minimum national language quotas, as well as through bans on advertising in foreign languages and/or copyright violation claims.<sup>7</sup> A key instrument for the European neighbours of Russia and Belarus is, interestingly enough, the European Convention on Transfrontier Television (ECTT).<sup>8</sup> The ECTT is the first international treaty creating a legal framework for the free circulation of transfrontier television programmes in Europe, through minimum common rules, as well as content requirements and standards. In 2006 Russia signed but has never ratified the ECTT and Belarus has not been a party to it at all, while other European countries of Eastern and Central Europe have joined the ECTT. Some of them quickly introduced measures to restrict access to their broadcasting markets for entities from countries that have not ratified the ECTT, or are not parties to other European treaties, such as the EU or EFTA.<sup>9</sup>

For non-Russian-speaking audiences abroad, Russia has been developing, since 2005, a significant world service delivered by a state-run audiovisual media corporation “Rossiya Segodnya” (or RS, translated from Russian as “Russia Today”) that quickly became

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<sup>5</sup> *О государственной политике Российской Федерации в отношении соотечественников за рубежом* (“On state policy of the Russian Federation in respect of compatriots abroad”), Federal Statute of the Russian Federation, 24 May 1999, N 99-FZ, Article 18, see: <http://www.kremlin.ru/acts/bank/13875>.

<sup>6</sup> See Richter A. (2018), “Cultural security of Ukraine in times of conflict: legal aspects” in *Handbook of cultural security*, Watanabe Y. (ed), Edward Elgar Publishing: Cheltenham, UK, pp. 461-486.

<sup>7</sup> See McGonagle T. and Richter A. (2004), “Regulation of Minority-Language Broadcasting”, IRIS Plus, European Audiovisual Observatory, Strasbourg, <https://rm.coe.int/16807833a7>.

<sup>8</sup> European Convention on Transfrontier Television, Strasbourg, 5 May 1989 (text amended according to the provisions of the Protocol (ETS No. 171) which entered into force, on 1 March 2002), <https://rm.coe.int/168007b0d8>.

<sup>9</sup> On the history of restrictions on Russian media in post-Soviet countries, see: Richter, A. (2007), *Post-Soviet Perspective on Censorship and Freedom of the Media*, Moscow: UNESCO, pp. 253-284, <https://unesdoc.unesco.org/ark:/48223/pf0000153744?posInSet=2&queryId=0f609433-3c3b-469e-adea-6522aaed1bc7>.



an instrument of state-directed propaganda.<sup>10</sup> RT and Sputnik are the flagship names for its programming which is being disseminated abroad through a network of subsidiaries and social media in several dozen foreign languages.<sup>11</sup> This conglomerate started with an annual budget of USD 30 million (EUR 27.5 million) and by 2022 (EUR 578 million this had grown to being the largest single media expenditure in the state budget rising to approximately USD 630 million. For comparison, the amount spent from the budget is 16 times greater than the amount spent on the national “public service television” or almost six times more than the amount allocated to the most popular state-controlled semi-private First Channel.<sup>12</sup>

In its turn, the Belarusian state-run TV has reportedly been effectively infiltrated and captured by Russian propagandists since the mass protests started in the country in 2020.<sup>13</sup> The direct budget expenditure for the national TV company in 2022 has formally reached BYN 114.7 million (EUR 45.2 million), although its financing also comes from the budget lines for “national defence” and “international activity”.<sup>14</sup>

The level of Russian state propaganda abroad and the need to restrict it reached a new level in 2014 with the Russian annexation of Crimea and the start of hostilities in eastern Ukraine. Both Ukraine and other states that expressed their condemnation of the Russian aggression came under a massive and systematic propaganda attack with the widespread use of disinformation on Moscow TV programmes, in Russian – for Russian-speaking audiences in Russia and abroad, as well as in foreign languages – first on RT and then on Sputnik – for non-Russian speaking audiences.<sup>15</sup> This attack became even more evident on 24 February 2022, when Russia openly invaded Ukrainian territory.

Increasingly, the restrictions were clearly directed against specific Russian media and took the form of general sanctions and bans, rather than vague demands of “adaptation” to national norms and international standards. Subsequently, the national sanctions were supplemented by the introduction of EU-wide “restrictive measures”, first in relation to the CEO of “Rossiya Segodnya” Dmitry Kiselyov and, in 2022, in relation to particular Russian audiovisual channels and companies.

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<sup>10</sup> See Ennis, S. (2013), *Putin’s RIA Novosti revamp prompts propaganda fears*, <https://www.bbc.com/news/world-europe-25309139>.

<sup>11</sup> See more in “Kremlin-Funded Media: RT and Sputnik’s Role in Russia’s Disinformation and Propaganda Ecosystem”, United States Department of State Global Engagement Center, 2022, p. 8, [https://www.state.gov/wp-content/uploads/2022/01/Kremlin-Funded-Media\\_January\\_update-19.pdf](https://www.state.gov/wp-content/uploads/2022/01/Kremlin-Funded-Media_January_update-19.pdf).

<sup>12</sup> “Миллиарды на пропаганду. Расходы бюджета на госСМИ подскочили втрое на фоне войны” (Billions on propaganda: Budget expenses for state media tripled in run-up to the war), The Moscow Times, 12 April 2022, <https://www.moscowtimes.ru/2022/04/12/milliardi-na-propagandu-rashodi-byudzheta-na-gossmi-podskochili-vtroe-na-fone-vojni-a19511>.

<sup>13</sup> Luxmoore M., “After Belarusian Journalists Quit State TV, Russians Fill the Void”, RFE/RL, 24 August 2020, <https://www.rferl.org/a/after-belarusian-journalists-quit-state-tv-russians-fill-the-void/30800576.html>.

<sup>14</sup> <https://belmarket.by/news/news-50768.html>.

<sup>15</sup> See Richter, A. (2015), “Legal Response to Propaganda Broadcasts Related to Crisis in and around Ukraine”, 2014-2015, *International Journal of Communication*, 9, pp. 3125–3145. <http://ijoc.org/index.php/ijoc/article/view/4149/1474>.



This *IRIS-Extra* provides information on legislative measures and case law that have appeared in Ukraine and elsewhere in Eastern Europe (Estonia, Latvia, Lithuania and Moldova) in respect of the audiovisual media from Russia and Belarus, beginning with the 2014 annexation of Crimea. It reports on sanctions on broadcasters as a specific instrument to prevent propaganda and disinformation from Moscow and/or Minsk. The scope of “special economic measures” against Russian media actors reached a new dimension with the introduction of EU-wide policies in March 2014, and the report allows the reader to compare the related case law of the European Court of Justice with the earlier decisions on the use of sanctions of the national courts in Eastern Europe.

This report does not cover a number of incidents in the past years when foreign broadcasters were stopped for reasons, other than general sanctions, such as lack of proper licences.<sup>16</sup> Nor does it discuss individual decisions of national independent media regulators on monetary fines, suspension or withdrawal of licences, which were based on the particular content of the broadcasters’ programmes, such as war propaganda,<sup>17</sup> or the “dissemination of misinformation”<sup>18</sup> or “hate speech”.<sup>19</sup> Also excluded here are numerous cases of expulsion of audiovisual reporters and auxiliary personnel back to Russia or Belarus that were addressed at the time by the Platform to promote the protection of journalism and safety of journalists of the Council of Europe and the OSCE Representative on Freedom of the Media.<sup>20</sup>

Neither does this report discuss the adoption and implementation of a regulation by the Council of the European Union on 1 March 2022,<sup>21</sup> which prohibited “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by [RT and Sputnik], including through transmission or distribution by any means such as cable, satellite, IP-TV, Internet service providers, Internet video-sharing platforms or applications, whether new or pre-installed”, as presented in detail by the Note from the European Audiovisual Observatory, published in March 2022.<sup>22</sup> Its national

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<sup>16</sup> See Etteldorf C., “[DE] VG Berlin confirms Mabb’s RT DE broadcast ban in interim proceedings”, IRIS 2022-5:1/25, <https://merlin.obs.coe.int/article/9467>.

<sup>17</sup> See Andersone I. and Strauta L., “[LV] Restrictions on harmful or illegal content and Russian propaganda channels”, IRIS 2022-5:1/23, <https://merlin.obs.coe.int/article/9469>.

<sup>18</sup> See Richter A., “[UA] Sanctions on Russian broadcasts”, IRIS 2015-5:1/38, <https://merlin.obs.coe.int/article/7264>.

<sup>19</sup> See Kostić B., “European Commission: Decision on Lithuania suspending transmission of Russian-language TV Channel RTR Planeta”, IRIS 2017-6:1/5, <https://merlin.obs.coe.int/article/7910> and Ó Fathaigh R., “European Commission: Decision to suspend broadcast of Rossiya RTR in Latvia compatible with AVMS Directive”, IRIS 2021-7:1/26, <https://merlin.obs.coe.int/article/9230>.

<sup>20</sup> See <https://fom.coe.int/en/accueil> and <https://www.osce.org/representative-on-freedom-of-media>.

<sup>21</sup> See Council Decision (CFSP) 2022/351 of 1 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.065.01.0005.01.ENG&toc=OJ%3AL%3A2022%3A065%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.065.01.0005.01.ENG&toc=OJ%3AL%3A2022%3A065%3ATOC) and Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2022.065.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A065%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.065.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A065%3ATOC).

<sup>22</sup> Cabrera Blázquez F. J. (2022), *The implementation of EU sanctions against RT and Sputnik*, European Audiovisual Observatory, Strasbourg, <https://rm.coe.int/note-rt-sputnik/1680a5dd5d>.



implementation and further expansion to include other audiovisual entities (Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24 and TV Centre International, or TVC) in June of the same year, can be monitored through reports by the European Platform of Regulatory Authorities (EPRA),<sup>23</sup> IRIS newsletter,<sup>24</sup> and existing academic and legal research.<sup>25</sup>

As to the broadcasters and online media that came under the sanctions, one other preliminary observation that is rarely noted in the discussion of the issue should be made. Unlike their Western “counterparts”, neither RT nor Sputnik make their editorial guidelines publicly available (if indeed they exist at all). Aside from general statements on media freedom on the RT website, no documents on their programming principles are in the public domain. There are no available statutes (by-laws) pertaining to the media outlets, nor are there any professional codes, or codes of ethics for their journalists, or any other professional standards. Neither have the broadcasters recognised the Russian Union of Journalists’ Code of Professional Ethics or the Ethical Standards of the Media<sup>26</sup> as a professional standard.<sup>27</sup> In fact, this observation applies to all mainstream media outlets, whether commercial or state-run – including national TV channels – in both Russia and Belarus. For example, the charter of an important national broadcaster in Moscow, the Defence Ministry’s television and radio company, Zvezda, stipulates that the company may engage in organising gambling but fails to mention any professional standards in respect of broadcasting or journalism.<sup>28</sup> None of the other major broadcasters – First Channel, Rossiya-1, Rossiya-24, Rossiya-K, the 5th Channel, Match-TV, or TVC (all heavily subsidised by the state) – have publicly accessible charters or editorial guidelines. In addition, the conditions of their licences do not refer to any editorial standards or

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<sup>23</sup> The European Platform of Regulatory Authorities, *Further measures taken by several media NRAs, different stances on combatting disinformation and propaganda*, 9 June 2022, [https://www.epra.org/news\\_items/the-latest-reactions-by-media-regulatory-authorities-to-the-situation-in-ukraine](https://www.epra.org/news_items/the-latest-reactions-by-media-regulatory-authorities-to-the-situation-in-ukraine); *EU ban extended to new channels, ban of all means of broadcast and transmission to reduce possibilities of circumvention*, 7 June 2022, [https://www.epra.org/news\\_items/new-package-of-eu-sanctions-targetting-russian-state-owned-channels](https://www.epra.org/news_items/new-package-of-eu-sanctions-targetting-russian-state-owned-channels).

<sup>24</sup> See e.g. Ó Fathaigh R., “[NL] Dutch ISPs block RT and Sputnik websites”, IRIS 2022-5:1/17, <https://merlin.obs.coe.int/article/9476>; Ó Fathaigh R., “Three additional Russian media outlets added to list of banned media in the EU”, IRIS 2022-7:1/7, <https://merlin.obs.coe.int/article/9541>; and Etteldorf C., “[DE] German media regulator bans RT DE television channel in Germany”, IRIS 2022-3:1/23, <https://merlin.obs.coe.int/article/9408>.

<sup>25</sup> Susi M., Benedek W., Fischer-Lessiak G., Kettemann M.C., Schippers B. and Viljanen J. (eds.) (2022), “Governing Information Flows During War: A Comparative Study of Content Governance and Media Policy Responses After Russia’s Attack against Ukraine”, (Hamburg: Verlag Hans-Bredow-Institut), GDHRNet Working Paper #4, <https://www.uibk.ac.at/zukunftsrecht/aktuelles/gdhrnet-working-paper--4.pdf>. Guide to the EU sanctions against Russia, Van Bael & Bellis Guide, 29 July 2022, <https://www.vbb.com/insights/trade-and-customs/european-union-imposes-severe-sanctions-on-russia-july-2020>; Pinggen A., *Council Sanctions against Russia and Belarus*, eucrim (Max Planck Institute for the Study of Crime, Security and Law), 11 August 2022, <https://eucrim.eu/news/council-sanctions-against-russia-and-belarus/>.

<sup>26</sup> The document adopted by the national Collegium on Press Complaints, see <https://presscouncil.ru/teoriya-i-praktika/dokumenty/6369-mediaeticheskij-standart-kollegii-2-0>.

<sup>27</sup> Despite the oppressive political climate within Russia, RT was even cited by the national media self-regulation body in 2020 for unprofessional dissemination of disinformation and political propaganda, see <https://presscouncil.ru/praktika/zhaloby-kollegii/rassmotrennye-zhaloby/6283-kollegiya-rassmotrela-zhalobu-na-izdanie-rt-i-telegram-kanal-bashnya-zhdanova?start=4>.

<sup>28</sup> Charter of the Zvezda television and radio company, 2009, <https://tvzvezda.ru/about/uchdocs/>.



accountability to the public. These broadcasters habitually refuse to engage in available external complaints procedures or self-regulation mechanisms.<sup>29</sup>

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<sup>29</sup> Cappello M. (ed.) (2018), “Media reporting: facts, nothing but facts?”, *IRIS Special*, European Audiovisual Observatory, Strasbourg, pp. 111-118, <https://rm.coe.int/media-reporting-facts-nothing-but-facts/16808e3cda>.

## 2. National sanctions

### 2.1. Ukraine

All Moscow TV channels were forced out of Ukrainian terrestrial broadcasting as early as in 1996. They remained popular on cable, although in the early 2000s the authorities required their removal from basic packages so that they were only available in prime packages .

On the eve of the annexation of Crimea in March 2014, some of the members of the Ukrainian media regulator, the National Council on Television and Radio Broadcasting (NCTRB), referring to the threat to the sovereignty of Ukraine, made a strong appeal to the cable operators to suspend certain Russian news and public affairs channels from their services. Within a week, the appeal was voluntarily followed by 347 out of 703 existing cable operators. The NCTRB also applied to the courts to cancel the licences of the non-compliant cable operators and ban Russian channels based on their content.<sup>30</sup>

The administrative court procedures lasted for more than six years until the administrative chamber of the Supreme Court of Ukraine decided that the national law does not provide for the claimant, the NCTRB, to present its claims in court.<sup>31</sup>

This protracted court case on the banning of a number of Russian TV channels in 2014-15 indicated that the judges were reluctant to make decisions on the existing weak grounds and, rather, expected the lawmaker and the executive to come up with more effective legal instruments. And indeed, such instruments were on their way.

#### 2.1.1. Conformity with the ECTT

In 2015 the Supreme Rada (the Parliament) adopted amendments to the 1996 Statute on Advertising and the 1994 Statute on Television and Radio Broadcasting that introduced a practical ban on commercials in TV programmes of foreign broadcasters, unless the latter were under the jurisdiction of the states that are members of the EU or parties to the ECTT. They also introduced a requirement that a Ukrainian entity intending to rebroadcast

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<sup>30</sup> See the case in detail here: Richter, A., *Cultural security of Ukraine*, op.cit. pp. 471-474.

<sup>31</sup> See Richter A., “[UA] Supreme Court on Russian broadcasts”, IRIS 2021-4:1/2, <https://merlin.obs.coe.int/article/9132>.

programmes of foreign entities that are not under such jurisdiction might start rebroadcasting only if it had a licence from the rightsholder, and only on condition that such programmes (channels) corresponded to the laws of Ukraine or to the ECTT and were included in the list of programmes (channels) that are permitted to be retransmitted by a decision of the NCTRB.<sup>32</sup> By 2017 the NCTRB had suspended or stopped the retransmission of 74 Russian channels on Ukrainian cable TV thus sanctioning them for failure to meet the ECTT standards.<sup>33</sup> They were dropped from the “List of foreign programmes whose content meets the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”.<sup>34</sup> It should be noted that an explanation of the grounds for removal has been provided for each of the numerous changes to the list and in the majority of cases of broadcasters dropped from the list the reasons were found to involve non-conformity with Ukrainian law, although the standard wording of the removal order said: “failure to meet the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”. Nonetheless, the procedure and criteria for including or removing television programmes from the list remained vague and was the subject of public and judicial controversy.

One such case was the expulsion from the list of the independent Moscow TV channel “Rain-TV” (or Dozhd) in 2017. Dozhd had been subject to pressure and persecution by the Russian authorities, at least since 2011, and was ultimately shut down in 2022. The decision was spurred by the fact that depictions of Crimea as a Russian republic also repeatedly violated Ukrainian advertising laws. The case was entered as an alert on the Council of Europe Safety of Journalists Platform,<sup>35</sup> to which the Ukrainian authorities replied that their official position was that in addition to violating the Statute on Advertising, Dozhd had violated the Statute on Television and Radio Broadcasting by broadcasting information (a map showing Crimea as part of Russia) in violation of the requirements of its Article 6, paragraph 2 (Prohibition of the use of broadcasting organisations for appeals to unleash wars, aggressive actions or their propaganda), as

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<sup>32</sup> The Statute of Ukraine entitled “On amendments to certain statutes of Ukraine as to the particularities of transmission (retransmission) of advertising in programmes of foreign TV broadcasters” (*Про внесення змін до деяких законів України щодо особливостей трансляції (ретрансляції) реклами, яка міститься у програмах та передачах іноземних телерадіоорганізацій*), 14 May 2015, No. 422-VIII, <https://zakon.rada.gov.ua/laws/show/422-19#Text>. Earlier the statute merely had a requirement that the content of programmes from non-EU and non-ECTT jurisdictions should be “adapted” to Ukrainian law, without specifying what that meant or how that could be proven.

<sup>33</sup> Len, O., “Yuri Artemenko: The sooner we get rid of Russian media products the sooner we will rebuild Ukraine” (*Юрій Артеменко: Чим раніше ми позбавимося російського медіапродукту, тим раніше відбудуємо Україну*), Espresso.tv, 26 January 2017, <https://espresso.tv/article/2017/01/26/len32>.

<sup>34</sup> List of foreign programmes, the content of which reflects the demands of the European Convention on Transfrontier Television and Ukrainian Law (*Перелік іноземних програм, зміст яких відповідає вимогам Європейської конвенції про транскордонне телебачення і законодавства України*), 2 April 2008, as amended, <https://zakon.rada.gov.ua/rada/show/vr652295-08#Text>. Consolidated list of 185 programmes as of 20 January 2022 which can be found on the website of the NCTRB: [https://www.nrada.gov.ua/regulatory\\_base/#category-63](https://www.nrada.gov.ua/regulatory_base/#category-63).

<sup>35</sup> “The National Radio and TV Council of Ukraine Bans Broadcast of Russian TV Channel Dozhd”, Platform to promote the protection of journalism and safety of journalists, No. 6/2017, 17 February 2017, <https://fom.coe.int/en/alerte/detail/22241532;globalSearch=false>.



well as Article 28, paragraph 1, of the Statute of Ukraine “On Information” (Prohibition of the use of information for calls to overthrow the constitutional order, to violate the territorial integrity of Ukraine, for war propaganda, violence, cruelty, the incitement of ethnic, racial or religious hatred, the perpetration of terrorist acts or the infringement of human rights and freedoms). “Given the above circumstances”, says the reply, the NCTRB, “acting within its powers, delivered a legitimate decision”.<sup>36</sup>

The Independent Media Council of Ukraine, a public expert and consultant body, reviewed the case on its own initiative and provided a Conclusion based on European law.<sup>37</sup> It said that the decision of the NCTRB is in conformity with the three-part test for limiting freedom of expression prescribed by Article 10 of the European Convention on Human Rights (ECHR) as interpreted by the European Court of Human Rights (ECtHR), meaning that the restriction imposed 1) was prescribed by law, 2) pursued a legitimate aim, and 3) was necessary in a democratic society (meeting a pressing social need and being proportionate). The key argument of the Conclusion was that the ban of Dozhd in Ukraine prevented further “normalising” of the occupation of Crimea through the use of media and advertising. It said to the opponents of the particular ban that they “do not appear to realise that human rights in general and freedom of expression in particular do not exist in a void, but rather in a paradigm of the state and its relationship to the individual person”.<sup>38</sup>

Another case reached the Supreme Court of Ukraine in 2021. It started in September 2018, when the NCTRB found that the Russian-language television network RTVI, with its editorial office in New York and registration in Spain, was not in conformity with “the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”<sup>39</sup> and thus temporarily excluded it from the “List of foreign programmes whose content meets the requirements of the European Convention on Transfrontier Television and Ukrainian legislation” and suspended its retransmission first for six months, and then – six months later and following monitoring of its content – for a year,<sup>40</sup> and then once again, for another year.<sup>41</sup> The reasons for the three decisions, though, were not dissimilar to that in the case of Dozhd: displaying a map showing Crimea as part of Russia, as well as films with the participation of actors named in the “List of persons who pose a threat to national security” (see below).

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<sup>36</sup> Official position of Ukraine, see <https://rm.coe.int/16806f46ee>.

<sup>37</sup> *Обмеження ретрансляції телеканалу «Дощ» в Україні* (Restricting rebroadcasting of the TV channel Dozhd in Ukraine), Conclusions by the Independent Media Council, 21 January 2017, <https://mediarada.org.ua/case/616/>. (The webpage contains a link to the English translation, which can be found here: [https://mediarada.org.ua/wp-content/uploads/2017/01/Dozhd\\_findings\\_IMC\\_ENG\\_01.31.17.docx](https://mediarada.org.ua/wp-content/uploads/2017/01/Dozhd_findings_IMC_ENG_01.31.17.docx)).

<sup>38</sup> Ibid.

<sup>39</sup> Decision of the NCTRB, No. 1378, 6 September 2018, <https://www.nrada.gov.ua/wp-content/uploads/2018/09/R-2018-01378.pdf>.

<sup>40</sup> Decision of the NCTRB, No. 288, 6 March 2019, [https://zakononline.com.ua/documents/show/470629\\_470694](https://zakononline.com.ua/documents/show/470629_470694).

<sup>41</sup> «RTVI» вилучено із переліку дозволених для показу в Україні телеканалів (RTVI dropped from the list of TV channels permitted for distribution in Ukraine), press release, 6 March 2020, <https://www.nrada.gov.ua/rtvi-vylucheno-iz-pereliku-dozvolenyh-dlya-pokazu-v-ukrayini-telekanaliv/>; Decision of the NCTRB, No. 416, 6 March 2020, <https://www.nrada.gov.ua/wp-content/uploads/2020/03/R-2020-00416.pdf>.

The latest decision was appealed in an administrative court. In the second instance, the Sixth Administrative Court of Appeals found the first paragraph of the NCTRB decision (on non-conformity) null and void as neither the ECTT, nor Ukrainian law provide for the regulator to reach a conclusion unilaterally, whether or not the norms of the ECTT were indeed breached by a broadcaster under the jurisdiction of another state-party to the Convention, as it envisions a specific joint adjudication procedure which was not used in this case.

As to the exclusion of RTVI from the “List of foreign programmes whose content meets the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”, the court found the document to be a mere informational paper for the TV service providers that intend to rebroadcast a particular foreign programme. The list does not carry any legal implications or sanctions for such providers or rightsholders. The court found that neither the NCTRB, nor any other authority had issued a ban on the rebroadcasting of RTVI in Ukraine. Thus, the expulsion of the programme from the list, concluded the Court of Appeals, did not violate any rights of the claimant, and therefore there were no grounds to cancel the decision to remove RTVI from the list.<sup>42</sup>

This decision was twice (sic!) appealed by the NCTRB in the Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, which found no grounds for the motion by the claimant. It affirmed the second instance decision in December 2021<sup>43</sup> and then again – upon review of the previous decision – in January 2022.<sup>44</sup>

## 2.1.2. Programmes fit for rebroadcasting

These decisions highlighted the need to have a firmer base for the procedures and decisions of the NCTRB in relation to programmes permitted in Ukraine. The issue regarding the way the NCTRB decides which programmes do not conform to the ECTT and why they do not conform became very controversial. Expectations that a future media law will regulate these issues have not yet been met. Hence the idea to make another list the prime instrument for curbing Russian propaganda.

The “List of programmes of foreign television and radio organisations that are rebroadcast”<sup>45</sup> was envisioned by the amendments to Article 42 of the Statute on

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<sup>42</sup> Sixth Administrative Court of Appeals, Case No. 640/21109/20, 9 November 2021, <https://reyestr.court.gov.ua/Review/101120538#>.

<sup>43</sup> Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, Case No. 640/21109/20, 30 December 2021, <https://reyestr.court.gov.ua/Review/102362304>.

<sup>44</sup> Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, Case No. 640/21109/20, 25 January 2022, <https://reyestr.court.gov.ua/Review/103033586>.

<sup>45</sup> List of programmes of foreign television and radio entities that are rebroadcast (*Перелік програм іноземних телерадіоорганізацій, що ретранслюються*), 15 September 2022, <https://www.nrada.gov.ua/natsionalna-rada-onovlyuye-perelik-inozemnyh-program/>.



Television and Radio Broadcasting, adopted in 2015.<sup>46</sup> Prior to September 2022, it had been compiled by the NCTRB in a somewhat chaotic and unclear way. By a decision of the NCTRB<sup>47</sup> that entered into force in February 2022, the producers and/or rightsholders of foreign audiovisual programmes that aimed to continue rebroadcasting in Ukraine were to submit new applications and documents. On the basis of these applications, the NCTRB made the decision as to whether to include them in the list or not. Those who failed to be included in the list faced the threat that by 15 November 2022 all earlier decisions of the NCTRB, according to which foreign programmes are currently rebroadcast (including the decisions that included them in the “List of foreign programmes whose content meets the requirements of the European Convention on Transfrontier Television and Ukrainian legislation”), would become null and void.

The principal aim of the new list was not only to establish a clearer procedure for registering foreign programmes that were intended to be rebroadcast, but also to prevent any broadcasters tied to the Russian Federation from even attempting to apply. For example, the procedure indicates that any applications from the producers/rightsholders of programmes that are under the jurisdiction of the Russian Federation shall be dismissed without review.

### 2.1.3. Restricting the aggressor state

In January 2015, the Supreme Rada of Ukraine adopted a resolution on recognising the Russian Federation as “an aggressor state”.<sup>48</sup> This non-binding decision of the Parliament turned out to be a useful tool to restrict Moscow’s interventions in the Ukrainian audiovisual sphere without directly mentioning Russia each time it is used.

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<sup>46</sup> Про внесення змін до деяких законів України щодо особливостей трансляції (ретрансляції) реклами, яка міститься у програмах та передачах іноземних телерадіоорганізацій (Відомості Верховної Ради (ВВР), 2015, No. 29, ст.265), <https://zakon.rada.gov.ua/laws/show/422-19#Text>. See Richter A., “[UA] Foreign TV severely restricted”, IRIS 2015-7:1/30, <https://merlin.obs.coe.int/article/7337>.

<sup>47</sup> On approval of the procedure for approval of the list of programmes of foreign television and radio entities that are rebroadcast (Про затвердження Порядку формування Переліку програм іноземних телерадіоорганізацій, що ретранслюються), Decision of the National Council on Television and Radio Broadcasting, No. 1727, 18 November 2021, entered into force on 1 February 2022, <https://zakon.rada.gov.ua/laws/show/z0061-22#n14>.

<sup>48</sup> Про Звернення Верховної Ради України до Організації Об’єднаних Націй, Європейського Парламенту, Парламентської Асамблеї Ради Європи, Парламентської Асамблеї НАТО, Парламентської Асамблеї ОБСЄ, Парламентської Асамблеї ГУАМ, парламентів держав світу про визнання Російської Федерації державою-агресором. (On the Appeal of the Supreme Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly and national parliaments on recognising the Russian Federation as an Aggressor State). Resolution of the Supreme Rada of Ukraine, 27 January 2015, No. 129-VIII, <https://zakon.rada.gov.ua/laws/show/129-19#Text>.

In April 2015, the Statute to protect the information segment of the television and radio landscape of Ukraine was promulgated.<sup>49</sup> In particular, it amended the Broadcasting Statute of Ukraine<sup>50</sup> by introducing a ban on broadcasting of audiovisual programmes that fall under the following categories:

- programmes produced after 1 August 1991 that popularise institutions of the aggressor state, as well as its actions that justify or legitimise the illegal occupation of Ukrainian territories;
- films and TV programmes (with the exception of news and current affairs) with the participation of a person included in the “List of persons who pose a threat to national security”.<sup>51</sup>

The statute defines “participation” as a functional activity of an actor, artist, script author, music composer, narrator, director and/or producer of a film or TV programme.

Several months later, another statute introduced a blanket ban on ownership of or participation in television and radio entities, as well as multiplex and cable operators for entities and entrepreneurs that are registered in offshore zones or in a country recognised by the Supreme Rada as an aggressor state.<sup>52</sup>

Licence holders that violate the above provisions face sanctions by the NCTRB.

## 2.1.4. Individual sanctions

However, the key legal instrument that has been used against Russian broadcasters has turned out to be the sanctions introduced in order to punish aggressive actions against Ukraine.

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<sup>49</sup> Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопростору України (Відомості Верховної Ради (ВВР), 2015, No. 18, ст.131) <https://zakon.rada.gov.ua/laws/show/159-19#Text>. See Richter A., “[UA] Barrier established for Russian programmes”, IRIS 2015-5:1/37, <https://merlin.obs.coe.int/article/7263>.

<sup>50</sup> Про внесення змін до Закону України “Про телебачення і радіомовлення (Відомості Верховної Ради України (ВВР), 2006, No. 18, ст.155), <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3317%2D15#Text>. See Shevchenko T., “[UA] Sweep changes in broadcasting statute”, IRIS 2006-5:1/34, <https://merlin.obs.coe.int/article/3834>.

<sup>51</sup> Перелік осіб, які створюють загрозу національній безпеці (List of persons who pose a threat to national security), see on the official webpage of the Ministry of Culture and Information Policy of Ukraine <https://mkip.gov.ua/content/perelik-osib-yaki-stvoryuyut-zagrozu-nacbezpeci.html>. Currently the list contains 209 names.

<sup>52</sup> The Statute of Ukraine ‘On amendments to certain laws of Ukraine as to the provision of transparency of property of the mass media and implementation of the national policy in the field of television and radio broadcasting’ (Про внесення змін до деяких законів України щодо забезпечення прозорості власності засобів масової інформації та реалізації принципів державної політики у сфері телебачення і радіомовлення), 3 September 2015, No. 674-VIII, <http://zakon2.rada.gov.ua/laws/show/674-19>.

The statute “On sanctions” adopted in 2014 has become the legal foundation for all national sanctions in Ukraine.<sup>53</sup> It provides, *inter alia*, an annulment of available licences for entities under “economic sanctions or other restrictive measures” and a ban prohibiting them from using radio frequencies, telecommunication networks or services in the country. According to the statute, appeals for sanctions from certain state institutions are reviewed by the Council on National Security and Defence of Ukraine and then introduced, upon the Council’s recommendation, by a presidential decree.

Among the grounds for sanctions, the amended statute envisions informational support for taking actions or making decisions that target national security, sovereignty or the territorial integrity of the country, in particular through the organisation, financing and direct implementation of public actions (e.g., on the Internet or in the mass media) aimed at:

- incitement to an armed aggression against Ukraine, genocide of the Ukrainian people, discrimination on the basis of Ukrainian citizenship, committing acts that, according to the norms of international law and/or the legislation of Ukraine, have the characteristics of war crimes or crimes against humanity;
- justifying, recognising as legitimate or denying armed aggression against Ukraine, the occupation of the territories of Ukraine, committing acts that, according to the norms of international law and/or the legislation of Ukraine, have the characteristics of war crimes, genocide or crimes against humanity;
- the glorification of persons who have carried out armed aggression against Ukraine, representatives of armed formations of the aggressor state, irregular illegal armed formations, armed gangs and groups of mercenaries created, subordinated, managed and financed by the aggressor state, as well as representatives of the occupation administration of the aggressor state and representatives of self-proclaimed authorities that are controlled by the aggressor state that have usurped the performance of power functions in the temporarily occupied territories of Ukraine;
- maintaining the policy of the aggressor state regarding the non-recognition of the Ukrainian people’s right to self-identification and self-determination, distorting the idea of the identity of the Ukrainian people and their desire for independence, which is realised through the spread of false ideologies, which are based on the notoriously false and manipulative identification of Ukrainian patriotism with “Nazism” or other misanthropic ideologies;
- inciting hatred towards the Ukrainian people, their culture, state language, and national identity.<sup>54</sup>

First, in 2015, the presidential decree introduced sanctions in relation to four Russian TV companies: First Channel – World Network, RTR Planeta, Rossiya-24 and NTV.<sup>55</sup>

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<sup>53</sup> *Про санкції* (On sanctions), Statute of Ukraine, 14 August 2014, No. 1644-VII, <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

<sup>54</sup> *Op. cit.*, Article 5-1, part 2, paragraph c).

Then in May 2017, the president expanded the sanctions to such Russian TV companies as TV Centre, TNT, RBC, NTV-Plus, Zvezda, Moskva-24, Peterburg, Ren-TV and “public broadcaster” OTV.<sup>56</sup>

In addition to the broadcasters, the second decree introduced sanctions against certain Internet companies, including the popular Russian services Yandex, Mail.ru and social networks Odnoklassniki (OK.ru) and V Kontakte (VK).<sup>57</sup> The effectiveness of these restrictions may be proven by the fact that in 2017 the number of Facebook users in Ukraine rose from 6.6 to 11 million, apparently migrating from the Russian social networks.<sup>58</sup>

Between 2018 and 2021, sanctions against Russian media, journalists and online resources were renewed (when necessary) and expanded. The legality of the presidential decrees on sanctions was challenged in the administrative courts.

On 4 November 2020, the Grand Chamber of the Supreme Court of Ukraine upheld the decision taken earlier by the Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, in the case challenging the decree on sanctions in relation to certain Russian social media and electronic mail services. The claimant N. was a citizen of Ukraine, in possession of accounts in OK.ru and VK, as well as a mailbox on Mail.ru, who argued that the sanctions violated his right to receive information and to freedom of expression, as guaranteed by Article 10 of the ECHR.

The Supreme Court ruled that the decree had the legitimate aim of an “urgent and effective response to the threats to the national security of Ukraine” (paragraph 42), which corresponds to the provisions of Article 10 of the Convention. They were prescribed by the national law, including the statute “On Sanctions”.<sup>59</sup> They were “necessary in a democracy”, as there was an urgent need to introduce and continue the sanctions in view of the “facts of aggression against Ukraine” (paragraph 44).

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<sup>55</sup> Про рішення Ради національної безпеки і оборони України від 2 вересня 2015 року “Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)” (On the Decision of the Council on National Security and Defence of Ukraine of 2 September 2015 “On the introduction of personal special economic and other restrictive measures (sanctions)”, Decree of the President of Ukraine No. 549/2015, 16 September 2015, <https://www.president.gov.ua/documents/5492015-19437>.

<sup>56</sup> See Richter A., “[UA] Sanctions against Russian online and broadcast companies”, IRIS 2017-7:1/33, <https://merlin.obs.coe.int/article/7973>.

<sup>57</sup> Про рішення Ради національної безпеки і оборони України від 28 квітня 2017 року “Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)” (On the Decision of the National Security and Defense Council of Ukraine” of 28 April 2017 “On the introduction of individual special economic and other restrictive measures (sanctions)”). Decree of the President of Ukraine No. 133, 15 May 2017, <http://www.president.gov.ua/documents/1332017-21850>.

<sup>58</sup> Minchenko O., “As many as 12 million Ukrainians use Facebook” (Вже 12 мільйонів українців користуються Facebook), Watch, 8 August 2018, <http://watcher.com.ua/2018/08/08/vzhe-12-milyoniv-ukrayintsiv-korystuyutsya-facebook/>.

<sup>59</sup> Про санкції (On sanctions), Statute of Ukraine, 14 August 2014, N 1644-VII, <https://zakon.rada.gov.ua/laws/show/1644-18#Text>.

The Supreme Court said that the claimant had not substantiated a violation of his rights by sanctions against these particular services while other “analogous” online services remain free from governmental interference in Ukraine (paragraph 45).

Therefore, the President of Ukraine had acted in a lawful and legal manner while introducing these necessary and proportionate restrictions (paragraph 48).

The Grand Chamber dismissed the application. This decision is final and may not be further appealed.<sup>60</sup>

Although, despite numerous previous bilateral agreements, no Ukrainian broadcaster has ever been granted a licence to broadcast in Russia, the Russian authorities introduced their own “countersanctions” in relation to individual broadcasters from Ukraine. In line with the 2018 Federal Statute “On measures to influence (counter) the unfriendly actions of the United States of America and other foreign countries”<sup>61</sup> and the follow-up decree of the Russian President,<sup>62</sup> the government compiled a list of individuals and legal entities “under the control” of “unfriendly” foreign states that are therefore subject to particular “special economic measures” by the Russian Federation.<sup>63</sup> The sanctions provided for the blocking of funds and property on the territory of Russia. Among these are *StarLightMedia*, the largest broadcasting company in Ukraine, with seven national TV channels, as well as the then head of Media Group “1+1” (and currently Minister of Culture and Information Policy) Oleksandr Tkachenko.<sup>64</sup>

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<sup>60</sup> Decision of the Grand Chamber of the Supreme Court, case No. 9901/138/20, 4 November 2020, <https://reyestr.court.gov.ua/Review/93217974>.

<sup>61</sup> “On measures to influence (counter) the unfriendly actions of the United States of America and other foreign countries” (*О мерах воздействия (противодействия) на недружественные действия Соединенных Штатов Америки и иных иностранных государств*). Federal statute of 4 June 2018 N 127-ФЗ, <http://publication.pravo.gov.ru/Document/View/0001201806040032>.

<sup>62</sup> “On applying special economic measures in connection with unfriendly actions of Ukraine in regard to the citizens and legal entities of the Russian Federation” (*О применении специальных экономических мер в связи с недружественными действиями Украины в отношении граждан и юридических лиц Российской Федерации*). Decree of the President of the Russian Federation of 22 October 2018 No. 592, <http://base.garant.ru/77681287/#ixzz6KwFMwl3l>.

<sup>63</sup> See Richter A., “Foreign agents’ in Russian media law”, IRIS Extra, European Audiovisual Observatory, Strasbourg, December 2020, <https://rm.coe.int/iris-extra-2020en-foreign-agents-in-russian-media-law/1680a0cd08>.

<sup>64</sup> List of legal entities in respect of which special economic measures are introduced (*Перечень юридических лиц, в отношении которых вводятся специальные экономические меры*), Supplement No. 2 to the Ordinance of the Government of the Russian Federation of 1 November 2018 No.1300, point 54, <https://base.garant.ru/72092976/948c9c0734b6e944a4727660f2d5a027/>.

<sup>64</sup> List of physical entities in respect of which special economic measures are introduced (*Перечень физических лиц, в отношении которых вводятся специальные экономические меры*), Supplement No. 1 to the Ordinance of the Government of the Russian Federation of 1 November 2018, No.1300, point 791, [https://base.garant.ru/72092976/89300effb84a59912210b23abe10a68f/#block\\_100](https://base.garant.ru/72092976/89300effb84a59912210b23abe10a68f/#block_100).

## 2.1.5. Sanctions against domestic broadcasters

The President of Ukraine introduced, by means of the Presidential Decree of 2 February 2021,<sup>65</sup> broad sanctions against a deputy of the Supreme Rada Taras Kozak and eight domestic television companies affiliated with him. Prior to the measure, the government had alleged the broadcasters were under “malign Russian influence” and were financed from the Russian Federation.<sup>66</sup> According to the Ukrainian authorities, “the measures introduced in Ukraine were aimed at limiting the actions of the specific person who participated in financing terrorist organisations in eastern Ukraine”. These sanctions led to an annulment of broadcasting licences and a five-year suspension of broadcasting of the national TV channels Zik-TV, NewsOne and 112-Ukraine which were apparently part of Kozak’s media holding. In reply to the concerns of the OSCE Representative on Media Freedom regarding the closure of three national TV channels,<sup>67</sup> the Ukrainian delegation stated:

*The restrictions have been applied to the businesses owned by this person including the media companies. Such measures are not directed against the journalists and their work.*

*Over the past few years, the mentioned media companies got most of warnings issued by the media regulator in the field. In 2020 alone, more than 20 warnings and penalties for various violations of Ukrainian legislation were applied to these media companies. Most of the violations are related to hate speech, distortion of facts, recognised by the international community, and other exclusively propaganda techniques on the air.<sup>68</sup>*

The decree on sanctions against the domestic TV channels was meanwhile challenged in the Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, as the court of first instance in such a category of cases, by a Ukrainian citizen, N.<sup>69</sup> He claimed that it violated his right to receive information and freedom of expression, as guaranteed by the Ukrainian Constitution, Article 10 ECHR, and the national law. The claimant also said that the decree does not indicate the aim of the restrictions, and that their

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<sup>65</sup> Про рішення Ради національної безпеки і оборони України від 2 лютого 2021 року «Про застосування персональних спеціальних економічних та інших обмежувальних заходів (санкцій)» (“On the Decision of the Council on National Security and Defence of Ukraine” of 2 February 2021 “On the introduction of personal special economic and other restrictive measures (sanctions)”), Decree of the President of Ukraine No. 43/2021, 2 February 2021, <https://www.president.gov.ua/documents/432021-36441>.

<sup>66</sup> “TV Channels 112 Ukraine, NewsOne and ZIK TV Suspended by Presidential Decree”, Platform to promote the protection of journalism and safety of journalists, No. 21/2021, 23 June 2021, <https://fom.coe.int/en/alerte/detail/90213139;globalSearch=true>.

<sup>67</sup> “OSCE Representative on Freedom of the Media meets with Ambassador of Ukraine”, press release, 3 February 2021, <https://www.osce.org/representative-on-freedom-of-media/477451>.

<sup>68</sup> Statement in response to the Report by the OSCE Representative on Freedom of the Media, Ms. Teresa Ribeiro, 13 May 2021, <https://vienna.mfa.gov.ua/en/news/zayava-u-vidpovid-na-dopovid-predstavnika-obsyev-z-pitan-svobodi-zmi-terezi-ribeiro>.

<sup>69</sup> Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, Case No. 9901/26/21, 19 March 2021, <https://reyestr.court.gov.ua/Review/95723166>.

proportionality, and therefore legality, are doubtful. He asked the Supreme Court to annul the decree.

The Administrative Cassation Court reviewed the case on 19 March 2021 and came to the conclusion that the aim of the decree was the protection of the national security of Ukraine while the sanctions introduced therein were proportionate to the aim.

As to the information rights of the citizen, the Administrative Cassation Court ruled that the claimant was not deprived of his right to seek and obtain information of similar content, through the Internet, or some other TV channels “of analogous nature”. Specifically, the Administrative Cassation Court said, that at the time of submitting the complaint, some of the TV channels under sanctions were still available online, in particular through a YouTube channel.<sup>70</sup> The claimant failed to explain why access through the Internet to the indicated TV channels was unacceptable or overwhelmingly burdensome. The claimant was not deprived by the decree of the opportunity to use other information resources analogous to those to which access was prevented by the decree. Therefore, the applicant had not substantiated a violation of his rights by the restrictions introduced by the state, which implied the absence of a violation of the rights and freedoms of the applicant.<sup>71</sup> The Administrative Cassation Court dismissed the claims, and the decision was appealed in the Grand Chamber of the Supreme Court of Ukraine.

The Grand Chamber reviewed the appeal in October 2021. In explaining its position, the court observed that the laws of Ukraine and the ECHR

*guarantee a person the right to receive information without intervention of public authorities (except for specific cases), but do not guarantee its receipt from a specific source. The claimant insists that he wants to receive information from certain TV programmes on specific TV channels. The right to receive information disseminated, in particular, in the mass media, does not create an opportunity for the consumer of information to demand the viewing of specific TV programmes on specific TV channels. Even with the termination of a broadcaster, this particular right does not cease to exist, since the possibility of obtaining analogous information from other equally valuable sources remains. Therefore, restricting the viewer’s access to certain TV channels or TV programmes does not mean a violation of the right to information.<sup>72</sup>*

In essence, said the Court, the claimant was acting in the interests of another person – the one under the sanctions – as the decree did not interfere with the direct rights of the claimant. Once the person under these particular sanctions challenged them in court, the claims would be materially reviewed.<sup>73</sup>

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<sup>70</sup> At the request of the Ministry of Culture and Information Policy of Ukraine, YouTube blocked the accounts of the TV channels on 24 April 2021, see <https://en.interfax.com.ua/news/general/739900.html>.

<sup>71</sup> Administrative Cassation Court, a chamber of the Supreme Court of Ukraine, case No. 9901/26/21, 19 March 2021, <https://reyestr.court.gov.ua/Review/95723166>.

<sup>72</sup> Decision of the Grand Chamber of the Supreme Court, case No. 9901/26/21, 6 October 2021, paragraph 68, <https://reyestr.court.gov.ua/Review/101424457>.

<sup>73</sup> *Ibid.*, paragraphs 69-73.

The Grand Chamber dismissed the earlier decision of the Administrative Cassation Court in the part related to its grounds by explaining that the dispute was not amenable to consideration in administrative proceedings and, moreover, may not be subject to judicial consideration at all.<sup>74</sup> With the dismissal of the decision by the first instance court, the Supreme Court also ruled to close all the proceedings in the case.

To this category of sanctions one may add the switch-off, on 4 April 2022, of three other general-interest national TV channels (5th Channel, Espresso, and Pryamyi) from terrestrial broadcasting by the state telecom operator, the Concern of Radiobroadcasting, Radiocommunications and Television Broadcasting.<sup>75</sup> Their spots on digital TV multiplexes were taken by the “United News” of the remaining general-interest national channels. Having lost about 40 percent of their audience, the three programmes are still broadcast online and/or on YouTube. On 14 April 2022, the Supreme Rada adopted the “Statement on the Value of Free Speech, Guarantees of Journalists’ and Media Activities under Martial Law”,<sup>76</sup> which indirectly referred to this case by calling for a strong reaction of law-enforcement agencies to “any ... cases of technical switch-off of pro-Ukrainian channels from the air”. It also declared that the “Ukrainian state has no right to copy totalitarian practices of the aggressor state”.

### 2.1.6. Ban “on the propaganda from the Russian Nazi totalitarian regime”

On 12 June 2022, the statute “On the ban on the propaganda from the Russian Nazi totalitarian regime”<sup>77</sup> entered into force in Ukraine, having been earlier adopted by the Supreme Rada. It defines such propaganda as the

*dissemination of information aimed at supporting or justifying the criminal nature of the activities of the Russian Federation, the authorities of the terrorist state (aggressor state), their officials, employees (including servicemen) and/or representatives who openly or covertly act on behalf of the Russian Federation on the territory of Ukraine or from the territories of other states against Ukraine; a public denial, including through the media or*

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<sup>74</sup> Ibid., paragraph 77.

<sup>75</sup> See Richter A., “[UA] Efforts to counteract information aggression”, IRIS 2022-5:1/8, <https://merlin.obs.coe.int/article/9485>.

<sup>76</sup> Про Заяву Верховної Ради України про цінність свободи слова, гарантії діяльності журналістів і засобів масової інформації під час дії воєнного стану (“On the Statement of the Supreme Rada of Ukraine on the Value of Free Speech, Guarantees of Journalists’ and Media Activities under Martial Law”), Resolution of the Supreme Rada of Ukraine No. 2190-IX of 14 April 2022, <https://zakon.rada.gov.ua/laws/show/2190-20>.

<sup>77</sup> Про заборону пропаганди російського нацистського тоталітарного режиму, збройної агресії Російської Федерації як держави-терориста проти України, символіки воєнного вторгнення російського нацистського тоталітарного режиму в Україну (“On the ban on the propaganda of the Russian Nazi totalitarian regime, of the armed aggression of the Russian Federation as a terrorist state against Ukraine, of the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine”), Law of Ukraine, No. 2265-IX, 22 May 2022, [https://zakon.rada.gov.ua/laws/show/2265-20?fbclid=IwAR09wvjVSmAlz88xarZHaTPNzR7AhSuCVP4KeBQc-NKGZ\\_E1mfVs2\\_XfkGk#Text](https://zakon.rada.gov.ua/laws/show/2265-20?fbclid=IwAR09wvjVSmAlz88xarZHaTPNzR7AhSuCVP4KeBQc-NKGZ_E1mfVs2_XfkGk#Text).



*using the Internet, of the criminal nature of the armed aggression of the Russian Federation against Ukraine; or the public use of the symbols of the military invasion of the 'Russian Nazi totalitarian regime' in Ukraine, the use, production, distribution of products containing such symbols in Ukraine and/or abroad.*

Propaganda regarding the “Russian Nazi totalitarian regime” or the armed aggression of the Russian Federation as a terrorist state against Ukraine is prohibited.

The new statute amended the statute “On television and radio broadcasting”. The amendments specifically prohibit such propaganda unless it is disseminated during live broadcasts and is part of the remarks of a person who is not a presenter or other employee of a television and radio organisation. The amendments also provide for the national regulator to independently impose administrative monetary fines on any broadcasters that spread such propaganda or glorification of participants in the aggression.

## 2.2. Moldova

Until recently the audiovisual space of Moldova was under the influence of the Moscow broadcasters which were retransmitted via domestic affiliate channels or directly.<sup>78</sup> As recently as in 2020, the available Russian media were trusted by 35 percent of Moldovans, while the national media were trusted by 24 percent and those from the EU (most likely, Romania) by 42 percent.<sup>79</sup>

In 2017, the Parliament of the Republic of Moldova adopted amendments to the Audiovisual Code and, the following year, a new Audiovisual Media Services Code, which created the framework required for implementation of the EU’s Audiovisual Media Services Directive (the AVMS Directive). As the President, Mr. Igor Dodon, refused to sign either the amendments or the new Code, the acts were promulgated by the chairman of the Parliament.<sup>80</sup>

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<sup>78</sup> See: Rosca A., “Media in Moldova: Between Freedom and Monopoly”, Foreign Policy Research Institute, Philadelphia, September 2017, <https://www.fpri.org/article/2017/09/media-moldova-freedom-monopoly/>.

<sup>79</sup> *Анализ и стратегия проведения информационно-разъяснительной работы по повышению устойчивости Республики Молдова к дезинформации* (Analysis and Strategy of information and literacy activity to promote resistance of the Republic of Moldova to disinformation), Chisinau, December 2021, p. 11, [https://ipre.md/wp-content/uploads/2022/01/%D0%90%D0%9D%D0%90%D0%9B%D0%98%D0%97-%D0%98-%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%AF-%D0%9F%D0%A0%D0%9E%D0%92%D0%95%D0%94%D0%95%D0%9D%D0%98%D0%AF\\_compressed.pdf](https://ipre.md/wp-content/uploads/2022/01/%D0%90%D0%9D%D0%90%D0%9B%D0%98%D0%97-%D0%98-%D0%A1%D0%A2%D0%A0%D0%90%D0%A2%D0%95%D0%93%D0%98%D0%AF-%D0%9F%D0%A0%D0%9E%D0%92%D0%95%D0%94%D0%95%D0%9D%D0%98%D0%AF_compressed.pdf).

<sup>80</sup> *Codul serviciilor media audiovizuale al Republicii Moldova* (Audiovisual Media Services Code of the Republic of Moldova), No. 174, 8 November 2018, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=378387&lang=1>. See Richter A., “[MD] Broadcaster fined for airing Russian programme”, IRIS 2018-7:1/25, <https://merlin.obs.coe.int/article/8323> and Richter A., “[MD] New Audiovisual Code”, IRIS 2019-3:1/24, <https://merlin.obs.coe.int/article/8515>.



In both cases the objections of the then President referred to a provision, which, in order to protect the “national audiovisual space and to ensure information security”, allowed providers and distributors of media services to broadcast “informational and current affairs, military-political television and radio programmes” produced in EU member states, in the United States of America and Canada, and in other countries that have ratified the ECTT (paragraph 4 of Article 17). Also, steep fines were introduced for violations of the above provision; this made the amendments somewhat confusing, as they introduced penalties for violations of provisions that did not formally ban any actions.

The President of the Republic of Moldova challenged the constitutionality of the amendment in the Constitutional Court of Moldova. The court observed first of all that the disputed provision in fact “establishes a blanket ban for broadcasters and service distributors from transmitting” such types of programmes produced in states other than those specified therein.<sup>81</sup>

Using the three-part test for limiting freedom of expression prescribed by Article 10 ECHR as interpreted by the ECtHR, the Constitutional Court further noted that the amendments comply with the general legitimate aims established by the Constitution: ensuring national security and protecting the rights of others.<sup>82</sup> This conclusion was based on the presumption that broadcasters from states which have not ratified the ECTT might fail to comply with its requirements and the high democratic standards in the EU, the US and Canada.<sup>83</sup>

The court noted that there remained available alternative means to access such programmes, as long as free Internet access to the broadcast programmes from the states in question remained. On the other hand, the court held that it was not unreasonable to apply the ban only to broadcast programmes, as television remained the most influential means of communicating ideas in Moldova.<sup>84</sup>

With regard to the existence of less intrusive means by which to protect legitimate interests, the court held that a case-by-case review of every broadcast programme with informational, analytical, military and political content that is not produced in member states of the EU, in the US or Canada, nor in states that have ratified the ECTT, could lead to uncertainties, numerous litigations, costs and delays, which may give rise to arbitrariness. It would present “an excessive burden” for the state, as the authorities would then have to monitor programmes of broadcasters from jurisdictions outside the scope of the disputed provision. Furthermore, such monitoring would give excessive discretion to the overseeing authorities.<sup>85</sup>

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<sup>81</sup> *Hotărâre privind controlul constituționalității Legii nr. 257 din 22 decembrie 2017 cu privire la completarea Codului audiovizualului al Republicii Moldova* (Decision on the constitutionality of statute No. 257 of 22 December 2017 on additions to the Audiovisual Code of the Republic of Moldova), Application No. 2a/2018, 4 June 2018, paragraph 49, <https://constcourt.md/ccdocview.php?tip=hotariri&docid=663&l=ro>.

<sup>82</sup> Op. cit., paragraph 55.

<sup>83</sup> Op. cit., paragraph 58.

<sup>84</sup> Op. cit., paragraphs 59-60.

<sup>85</sup> Op. cit., paragraph 65.



The Constitutional Court therefore examined whether a fair balance was struck between the contested blanket ban and the legitimate aims pursued. It noted that the “free market of ideas” in Moldova is unbalanced in favour of broadcasters from outside the parties to the ECTT, the EU, the US, or Canada. It noted that there is “no European consensus among Council of Europe member states on how to regulate the rebroadcasting of radio or television programmes produced abroad, that could jeopardise national security”.<sup>86</sup> It cautiously avoided naming the Russian origin of the dominant programmes in the country.

The court also considered that the ban did not cover other types of broadcast programmes from the outside the parties to the ECTT, the EU, the US, or Canada, nor did it cover the sources of audiovisual programmes other than broadcasting. Consequently, persons allegedly affected by the restriction had access to other sources of information.<sup>87</sup>

The decision concluded by saying that there was no reason to believe that the impact of the ban in question amounted to a disproportionate interference with freedom of expression or the right of access to information. In view of the above, the court rejected the constitutional complaint filed by the President of the Republic of Moldova and declared the disputed provision in the Code constitutional.<sup>88</sup>

In 2018, on the basis of the recently adopted amendment, the national media regulatory authority of Moldova, the Coordination Council for the Audiovisual (CCA), imposed on a national television network, Prime, a maximum possible fine of MDL 70 000 (roughly amounting to EUR 3 500).<sup>89</sup> The reason was a live rebroadcast of the annual address of Russian President Vladimir Putin to the Federal Assembly of the Russian Federation. At the CCA hearings on 5 April 2018, the broadcaster claimed that the programme had not fallen under any of the categories defined by law. It also said that the live broadcast was neither unforeseen in the listings, nor initiated by Prime, whereas its editorial content could not be anticipated by the rebroadcaster. It assured the CCA that it would do its utmost to ensure that “such problems do not arise in the future”.

The issue with this particular provision of the Audiovisual Services Code was not over. In 2020 the new composition of the Parliament “rephrased” paragraph 4 of Article 17 to make reference to the concept and the strategy of information security of the Republic of Moldova, imposing on all broadcasters – both domestic and foreign – the need to comply with it.<sup>90</sup>

Then, in June 2022, following the 2021 elections, when adopting a new set of amendments to the Audiovisual Services Code,<sup>91</sup> Parliament, in particular, reintroduced –

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<sup>86</sup> Op. cit., paragraphs 70-71, 73, 76.

<sup>87</sup> Op. cit., paragraphs 74-75.

<sup>88</sup> Op. cit., paragraph 80.

<sup>89</sup> Decision of the Coordination Council for the Audiovisual, No. 9/53, 5 April 2018, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=375133>.

<sup>90</sup> See Richter A., “[MD] Audiovisual Code amended”, IRIS 2021-3:1/11, <https://merlin.obs.coe.int/article/9119>.

<sup>91</sup> *Pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova, Lege No. 174/2018* (“On the amendment of the Audiovisual Services Code of the Republic of Moldova”, No. 174/2018), statute No. 143,



for what is expected to be the final time – the disputed provision of Article 17 paragraph 4, though with clearer wording:

*[M]edia service providers shall not broadcast, and media service distributors shall not retransmit, audiovisual television and radio programmes with news, information and analysis, military and political content which have been produced in States other than the Member States of the European Union, the United States of America, Canada and the States which have ratified the European Convention on Transfrontier Television, with the exception of films and entertainment programmes which have no military content.*

Additionally, the 2018 Audiovisual Media Services Code<sup>92</sup> introduced a complete ban on commercials and teleshopping in foreign broadcasts rebroadcast in Moldova. That provision and the penalties imposed under the same Code were appealed by Moldovan cable and telecom operators in the Constitutional Court as an overbroad intrusion of the state into freedom of expression and information and an unnecessary demand for the service providers to edit and delay retransmission of foreign broadcasts so as to delete possible commercials. The Constitutional Court reviewed the appeal in 2021 and concluded that the disputed norm does distinguish between foreign broadcasters from states parties to the ECTT and other states. At the same time, the ECTT does not envision or permit such obstacles to the free transfrontier circulation of programmes. Therefore, an absolute ban on foreign commercials and/or teleshopping was found to be unconstitutional, and was indeed struck out of the Code.<sup>93</sup>

## 2.3. Baltic States

Since 17 March 2014, the EU has progressively imposed restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. Article 2 of the Regulation<sup>94</sup> that governs this activity specified the core of these restrictive measures by saying:

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2 June 2022, [https://www.legis.md/cautare/getResults?doc\\_id=131800&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131800&lang=ro). Official English translation of the amendments is available here:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2022\)027-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2022)027-e).

<sup>92</sup> *Codul serviciilor media audiovizuale al Republicii Moldova* (Audiovisual Media Services Code of the Republic of Moldova), No. 174, 8 November 2018, Article 66, paragraph 7,

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=378387&lang=1>.

<sup>93</sup> *Privind excepția de neconstituționalitate a articolelor 66 alin. (7) și 84 alin. (13) din Codul serviciilor media audiovizuale (excluderea publicității și a teleshopping-ului din programele retransmise)* (“On an exceptional instance of unconstitutionality of Article 66, paragraph 7 and Article 84, paragraph 13 of the Audiovisual Media Services Code”) Decision of the Constitutional Court of the Republic of Moldova (“On the exclusion of advertising and teleshopping programmes from retransmission”), No. 36, 23 November 2021 (appeal No. 25g/2021), paragraph 70, [https://www.legis.md/cautare/getResults?doc\\_id=128967&lang=ro](https://www.legis.md/cautare/getResults?doc_id=128967&lang=ro).

<sup>94</sup> Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, OJ L 78, 17 March 2014, pp. 6–15. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269>.



1. All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex I shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I.

On 21 March 2014, Dmitry Kiselyov, a popular TV host on Russian state TV and Director-General of the International news agency “Rossiya Segodnya” (RS) was added to the list of persons subject to economic sanctions for the following reasons:

*Appointed by Presidential Decree on 9 December 2013 as Head of the Russian Federal State news agency “Rossiya Segodnya”. Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine.<sup>95</sup>*

Mr. Kiselyov attempted unsuccessfully to challenge his personal sanctions in the Court of Justice of the EU (CJEU). The General Court of the European Union (GCEU), a constituent court of the CJEU which hears actions taken against the EU institutions, in particular, pointed out that the applicant was not a regular Russian journalist. On the contrary, he engaged in propaganda “by using the means and power available to him as Head of RS a position which he obtained by virtue of a decree of President Putin himself”.<sup>96</sup>

In addition, it is noteworthy that the GCEU also referred in its decision to the resolution made in 2014 by the Russian Public Collegium for Press Complaints (PCPC), the national media self-regulation body, in response to a complaint relating to a programme that Kiselyov had presented. In that resolution, the self-regulation body considered that the programme had contained propaganda which presented the events in Kyiv in a biased manner and contrary to the journalistic principles of social responsibility, minimisation of harm, search for truth, impartiality and justice, in order to manipulate Russian public opinion through disinformation techniques.<sup>97</sup> Mr. Kiselyov at that time refused to stand before the PCPC. In those circumstances, said the GCEU, “it must be concluded that, by relying on the decision of the [PCPC]... the Council [of the European Union] was entitled to consider that the applicant had engaged in propaganda”.<sup>98</sup>

Contrary to public perception, these personal EU sanctions against Kiselyov were not unique, as at about the same time, between 2011 and 2016, similar sanctions existed in relation to several Belarusian journalists who then held administrative positions in the state media. From 2020 to 2022 the list of sanctioned persons has been expanded to

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<sup>95</sup> See point 26 of Annex I here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220901>.

<sup>96</sup> *Dmitrii Konstantinovich Kiselev v. Council of the European Union*, judgment of the General Court, 15 June 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015TJ0262>.

<sup>97</sup> Propaganda and Freedom of the Media, OSCE RFOM, 2015, pp. 55-57, <https://www.osce.org/files/f/documents/b/3/203926.pdf>.

<sup>98</sup> *Dmitrii Konstantinovich Kiselev v. Council of the European Union*, judgment of the General Court, 15 June 2017, para 111, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015TJ0262>.



include numerous new names of state propagandists, media managers and hosts of TV programmes on state channels in both Belarus and Russia.<sup>99</sup>

EU sanctions against “designated person” Kiselyov were used by the governments of Estonia and Latvia as a reason to additionally sanction “non-designated entities”: national media affiliates of “Rossiya Segodnya” in those countries, as economic resources controlled by the sanctioned person. In a similar manner, the restrictive measures against the designated Rossiya Bank, its chair and key shareholders were also applied to the bank’s media assets.<sup>100</sup>

In Estonia, where one third of the population are Russian speakers, the sanctions against Kiselyov forced the Russian state-controlled media portal Sputnik to move its office out of rented space in Tallinn in November 2021 as Estonian banks stopped accepting Sputnik payments. The Estonian Minister of Foreign Affairs said at that time: “I want to emphasise that we have not taken measures against the portal’s media content. They are financial sanctions aimed at economic activity. I believe it to be justified.” The activity of the office ceased on 1 January 2020, following threats to the local staff of criminal prosecution for violation of EU sanctions: its website in Russian and Estonian was first stopped from publishing new stories and then, after 24 February 2022, the domain name was blocked.<sup>101</sup> In June 2020, the Estonian Internet Foundation, which oversees domain registration in the country, imposed a restraint on the disposition of two domains – baltnews.ee and sputnik-news.ee – registered to RT. Baltnews is sometimes “Baltic Sputnik”.<sup>102</sup> The restraint on disposition means that legal actions are forbidden. For example, the domains cannot be sold or transferred to another person and thus used as an economic resource.<sup>103</sup>

The University of Latvia’s Institute of Mathematics and Computer Science, which oversees domain registration in the country, suspended the baltnews.lv domain in July 2019. The suspension came after the Latvian Ministry of Foreign Affairs sent the institute a letter indicating that Dmitry Kiselyov was on the EU list of sanctioned persons.<sup>104</sup> This led,

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<sup>99</sup> Council Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine, consolidated text as of 18 July 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R0765-20220720>; Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, consolidated text, as of 1 September 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220901#C15-1>.

<sup>100</sup> See Cabrera Blázquez F. J., *op.cit.* pp. 15-18; Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, consolidated text, as of 1 September 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220901#C15-1>.

<sup>101</sup> “Sputnik ends operations in Estonia”, Estonian Public Television ERR, 1 January 2020, <https://news.err.ee/1019231/sputnik-ends-operations-in-estonia>.

<sup>102</sup> “‘Baltic Sputnik’ exposed”, Latvian public broadcaster LSM, 25 July 2019, 6 April 2017, <https://eng.lsm.lv/article/society/society/baltic-sputnik-exposed.a231455/>.

<sup>103</sup> “Estonia ‘does not exclude the possibility’ of banning RT”, Estonian Public Television ERR, 8 July 2020, <https://news.err.ee/1110560/estonia-does-not-exclude-the-possibility-of-banning-rt>.

<sup>104</sup> “Access to Kremlin mouthpiece portal blocked according to EU sanctions rules”, Latvian public broadcaster LSM, 25 July 2019, <https://eng.lsm.lv/article/society/society/access-to-kremlin-mouthpiece-portal-blocked-according-to-eu-sanctions-rules.a326744/>.



at least initially, to a significant decrease in its audience size.<sup>105</sup> In 2016, the domain registry had shut down the Latvian domain of Sputnik, also identified by the Foreign Ministry as a propaganda tool.<sup>106</sup>

In February 2020, Estonian and Latvian security services even conducted a joint operation in both countries, aimed at suspected attempts to evade the EU sanctions. It led to the short detention of journalists and raids on media companies with links to the Russian Federation.<sup>107</sup> In Latvia, several journalists of both Baltnews and Sputnik were warned again in late 2020 by the security services on the inadmissibility of violating EU sanctions by cooperating with these RT affiliates, even as freelancers.<sup>108</sup>

In June 2020, the Latvian media regulator, the National Council on Electronic Media (NEPLP), “in compliance with the information received from security institution,” and following the EU sanctions against Kiselyov decided to suspend the distribution via cable of seven RT television programmes in Latvia, where ethnic Russians constitute a quarter of the country’s population. According to information from the security authorities, the seven were “the most influential channels of Russian propaganda in Western Europe”. In an unusual step, the regulator addressed the European public in English, explaining the rationale behind this radical step and calling for similar actions elsewhere in Europe.<sup>109</sup>

In Lithuania, the national media regulator, Radio and Television Commission (LRTK), almost simultaneously, and following advice from the Foreign Ministry suspended the rebroadcasting of five programmes affiliated with RT.<sup>110</sup>

On several occasions, the Russian Foreign Ministry protested to governments and international organisations about the spread of sanctions against Kiselyov on the media affiliated with RT by saying that the latter neither belonged to, nor was owned, held or

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<sup>105</sup> “Baltnews Latvia’s audience size decreased after domain suspension”, Medium Policy, 22 January 2020, <https://medium.com/dfrlab/baltnews-latvias-audience-size-decreased-after-domain-suspension-d636018f8a06>.

<sup>106</sup> “Russian Disinformation in Latvia”, Warsaw Institute, 11 December 2020, <https://warsawinstitute.org/russian-disinformation-latvia/>.

<sup>107</sup> “Estonian, Latvian security services raid suspected EU sanctions evaders”, Estonian Public Television ERR, 5 February 2020, <https://news.err.ee/1031607/estonian-latvian-security-services-raid-suspected-eu-sanctions-evaders>.

<sup>108</sup> See <https://rus.postimees.ee/7125477/v-latvii-zhurnalistam-rossiyskih-smi-za-narushenie-sankciy-es-grozit-tyurma>. In Lithuania, the national domain name of Lithuanian Sputnik was blocked in July 2019 by a court decision for violations of copyright by means of reprinting stories from the national public broadcaster. See <https://rus.postimees.ee/6728994/sud-razreshil-zablokirovat-portal-sputnik-litva> and <https://emerging-europe.com/news/lithuania-to-block-russias-sputnik-news-over-copyright-issues/>.

<sup>109</sup> “Media watchdog promises to tell Europe about RT ownership”, Latvian public broadcaster LSM, 7 July 2020, <https://eng.lsm.lv/article/features/media-literacy/media-watchdog-promises-to-tell-europe-about-rt-ownership.a366383/>.

<sup>110</sup> Gunkel E., *В Литве запретили ретрансляцию российского телеканала RT* (“Rebroadcasting of the Russian channel RT banned in Lithuania”), DW, 8 July 2020, <https://www.dw.com/ru/в-литве-запретили-ретрансляцию-российского-телеканала-rt/a-54100195>.

controlled by Kiselyov.<sup>111</sup> Moreover, the decisions of regulators were challenged in the national courts.

To arm themselves in further disputes about the applicability of adopted restrictive measures in a democracy, the foreign ministries of Estonia, Latvia and Lithuania requested the European Commission's opinion on whether they were rightly reading the implementation of economic sanctions in this case.<sup>112</sup> Without naming RT or Kiselyov, the Commission replied in June 2020 with an Opinion.<sup>113</sup> It confirmed its policy that "making funds or economic resources available to a non-designated entity, which is owned or controlled by a designated person, entity or body, amounts to making them indirectly available to the latter". Further, "if the designated person is determined to have control over the Entity, the Commission takes the view that the assets of the Entity must be frozen". Therefore, making payments to any bank account of the Entity is generally prohibited, while providing services to or working for the non-designated Entity can be considered as making economic resources indirectly available to the designated person.

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<sup>111</sup> See, e.g. "Russian foreign minister hits out at Estonia Sputnik actions", 18 January 2020, Estonian Public Television ERR, <https://news.err.ee/1025530/russian-foreign-minister-hits-out-at-estonia-sputnik-actions>.

<sup>112</sup> "Estonia 'does not exclude the possibility' of banning RT", Estonian Public Television ERR, 8 July 2020, <https://news.err.ee/1110560/estonia-does-not-exclude-the-possibility-of-banning-rt>.

<sup>113</sup> Commission Opinion of 19 June 2020 on Article 2 of Council Regulation (EU) No. 269/2014, 19.6.2020 C(2020) 4117 final, [https://ec.europa.eu/info/files/200619-opinion-financial-sanctions\\_en](https://ec.europa.eu/info/files/200619-opinion-financial-sanctions_en) and [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1126](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1126).





### 3. Case law of the Court of Justice of the European Union

In reaction to the full-scale invasion of Ukraine by Russia, the EU has agreed on a wide range of restrictive measures against Russian individuals and entities in order to cripple Russia's ability to finance the war and to impose painful costs on Russia's political elite responsible for or otherwise instrumental in the realisation of this unprovoked military attack on its neighbouring nation. Beyond trade restrictions in a number of economic sectors, the measures include sanctions against particular media outlets and media actors. The EU has updated its Russia sanctions, also published in a consolidated version.<sup>114</sup>

To begin with, in March 2022, the EU banned the state-owned media outlets RT and Sputnik, as well as their subsidiaries for being “engaged in a systematic, international campaign of media manipulation and distortion of facts in order to enhance its strategy of destabilisation of its neighbouring countries and of the Union and its Member States”.

In view of Russia's continuing actions destabilising the situation in Ukraine, three other media outlets, Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, and TV Centre International, were added to the sanctions list along with RT and Sputnik by the Decision and Regulation of the Council of the European Union on 3 June 2022.<sup>115</sup> There were also additional sanctions against Russian individuals occupying positions in the media that are similar to Mr. Kiselyov's. They were found to be “responsible for supporting actions and policies which undermine the territorial integrity, sovereignty and independence of Ukraine”.<sup>116</sup>

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<sup>114</sup> Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, consolidated text, as of 1 September 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220901#C15-1>.

<sup>115</sup> See: Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0879> and Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_2022.153.01.0128.01.ENG&toc=OJ%3AL%3A2022%3A153%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_2022.153.01.0128.01.ENG&toc=OJ%3AL%3A2022%3A153%3ATOC). See: Radel J., “Council Implementing Regulation (EU) 2022/994 of 24 June 2022 implementing Regulation (EU) 2022/879 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine”, IRIS 2022-7:1/2, <https://merlin.obs.coe.int/article/9547>.

<sup>116</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0582&from=EN>.



On 8 March 2022, RT France initiated legal proceedings against the Council of the EU's Decision and Regulation of 1 March 2022.<sup>117</sup> Immediately thereafter the GCEU rejected RT's application for interim measures.<sup>118</sup>

On 27 July 2022, the CJEU issued its judgment.<sup>119</sup> In dismissing the claims of RT France, it referred to Article 20(1) of the International Covenant on Civil and Political Rights (ICCPR),<sup>120</sup> which calls for a ban on war propaganda, and treated the ban broadly by saying that war propaganda also includes “propaganda of military aggression against Ukraine addressed to the civil society in the Union” (“...propagande en faveur de l'agression militaire de l'Ukraine adressée à la société civile dans l'Union”). It also referred to the dangers of “propaganda at war” (paragraph 210) and concluded by ruling that the scope of the prohibition imposed by Article 20(1) of the ICCPR includes not only incitement to a future war, but also “comments made continuously, repeatedly and concertedly in favour of an ongoing war”, (unleashed) contrary to international law, “in particular if these comments come from a media controlled, directly or indirectly, by the aggressor state” (paragraph 210).

The key to understanding the decision of the CJEU seems to be its paragraph 202, which provides as follows:

*The importance of the objectives pursued by the contested acts, namely, first, the cessation of continuous and concerted propaganda activity in favour of military aggression against Ukraine addressed to civil society in the Union and in neighbouring countries, which falls within the objective of safeguarding the values of the Union, its fundamental interests, its security, its integrity and its public order, and, on the other hand, the protection of territorial integrity, sovereignty and independence of Ukraine and the promotion of a peaceful resolution of the crisis in that country, which are part of the broader objective of maintaining peace and of international security, in accordance with the objectives of the Union's external action set out in Article 21(2)(a) and (c) of the Treaty of the European Union, is such as to outweigh the negative consequences, however considerable, of these measures for certain [media].<sup>121</sup>*

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<sup>117</sup> *RT France v. Council*, Case T-125/22, see: <https://curia.europa.eu/juris/documents.jsf?num=T-125/22>.

<sup>118</sup> Order of the President of the General Court of the European Union of 30 March 2022 in case T-125/22 R, *RT France v. Council of the European Union* (in French only), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=256901&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=479223>. See Cabrera Blázquez F. J., “European Court of Justice rejects RT France's urgent application for lifting of EU sanctions”, IRIS 2022-4:1/2, <https://merlin.obs.coe.int/article/9465>.

<sup>119</sup> Judgment of the General Court of 27 July 2022 – *RT France v. Council*, Case T-125/22 (in French only), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022TJ0125>.

<sup>120</sup> International Covenant on Civil and Political Rights, 16 December 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>121</sup> Judgment of the General Court of 27 July 2022, paragraph 202 (as translated from French into English).

## 4. Conclusion

We have seen that, for the first time in the modern history of Europe, sanctions against particular media companies or actors have become a widespread instrument for countering the influence of propaganda and disinformation. These sanctions stop the retransmission of related signals coming through cable, satellite or online platforms. Regardless of whether they are temporary or not, the sanctions represent a form of prior restraint of the media by some states against other states.

In the situation of armed conflict between the aggressor, Russia, and Ukraine, it is hard to both implement and calmly assess the national and international policies, including sanctions to protect national security and public order, especially when national security is so intricately intertwined with survival. There is a need for the dust to settle. That said, monitoring and collecting information on these issues should not be rejected. What is already clear today is that the scale of such restrictions is unprecedented in contemporary Europe.

Between 2014 and 2020, after testing a variety of instruments, Ukraine provided a workable model of counteracting alien propaganda and disinformation through the mechanism of sanctions. This model was challenged and approved by the highest national court. This report shows how this model has been adopted, with certain modifications, by other Eastern European countries, as well as by the EU at large.

Instead of tracing the origins of falsehoods and then proving malicious intent to disrupt national security or public order in long and painful court procedures, the authorities seem to have chosen the easier path of stopping all messages from an adversarial source through new legislation and the subsequent rulings of the national media regulators.

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